

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

ORIGINAL

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, NY

LOS ANGELES, CA

MIAMI, FL

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MANILA, THE PHILIPPINES

MUMBAI, INDIA

TOKYO, JAPAN

EX PARTE OR LATE FILED

FACSIMILE

(202) 955-9792

WRITER'S DIRECT LINE

(202) 887-1248

WRITER'S E-MAIL

rbuntrock@kelleydrye.com

March 24, 1999

RECEIVED  
MAR 24 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Magalie R. Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TWB-204  
Washington, DC 20554

Re: ***Ex Parte*, CC Docket 96-98, In the Matter of the Local Competition  
Provisions of the Telecommunications Act of 1996**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, the Association for Local Telecommunication Services ("ALTS") submits this notice, in the above-captioned docketed proceeding, of an *ex parte* on March 23, 1999, during a meeting with Thomas Power, Legal Advisor to Chairman Kennard. The presentation was made by Cronan O'Connell of ALTS and Jonathan Canis of Kelley Drye & Warren LLP.

During the meeting the parties discussed the need for the Commission to promptly develop the 'necessary' and 'impair' standard in light of the Supreme Court's decision. ALTS stated that in determining whether a given element meets the 'necessary' and 'impaired' standard, the Commission should take into account several factors, including: ubiquity in all geographic areas, the quality of the alternative functionality/capability, and the ability to provision the alternative functionality/capability in a timely manner. In addition ALTS urged the Commission not to waive or otherwise delay the implementation of geographic deaveraging.

No. of Copies rec'd 0+2  
List A B C D E

Magalie R. Salas, Secretary  
March 24, 1999  
Page Two

Pursuant to Section 1.1206(b)(2), an original and two copies of this *ex parte* notification, with attachment, are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully,

A handwritten signature in black ink, appearing to read "Ross A. Buntrock", written in a cursive style.

Ross A. Buntrock

cc: Thomas Power  
Cronan O'Connell  
Jonathan Canis

# **THE FCC'S REMAND PROCEEDING ON RULE 319**

CC DOCKET NO. 96-98

MARCH 23, 1999

CRONAN O'CONNELL, ALTS  
(202.969.2595)

JON CANIS  
KELLEY DRYE & WARREN, LLP  
(202.955.9600)

# **THE ‘NECESSARY’ AND ‘IMPAIR’ STANDARD**

- The Commission should commence this proceeding immediately.
- Supreme Court said Commission must use “rational basis” test, “taking into account the objectives of the Act.”
- Categorical, not a locality by locality approach, should be used.

# **THE ‘NECESSARY’ AND ‘IMPAIR’ STANDARD (cont’d)**

- In applying the standard the Commission should examine:
  - the availability of alternative capability/functionality from another source in all geographic areas;
  - the quality of the available substitute capability/functionality;
  - whether functionality is available in timely manner under similar terms and conditions as would be available from ILECs;
  - whether alternatives are available at prices which approximate TELRIC cost of ILEC facilities.

# RELATED ISSUES

- **Geographic Deaveraging**

- Deaveraging should NOT be linked to the universal service proceeding in any fashion.
- Sections 251 and 252 of the Act mandate that rates be cost-based; *AT&T v. Iowa Util. Bd.* specifically upheld the Commission's pricing authority.
- Chairman Kennard recently noted that the local loop "is critical for making local phone competition a reality," and any delay in deaveraging will hamper competition in rural areas.
- The Commission properly concluded in First Report and Order that "rates for interconnection and unbundled elements must be geographically deaveraged," and nothing in the record has changed. *See* 47 C.F.R. Sec. 51.507(f).
- Deaveraging should be implemented within 6 months.

# RELATED ISSUES (cont'd)

- **ILEC Petitions for Pricing Flexibility**

- FCC triggers as set forth in the *Access Reform Order* (i.e. geographic deaveraging, UNEs at TELRIC prices) have not yet been implemented.
- Competition is not yet robust and sustainable, as evidenced by the fact that no ILEC has succeeded in obtaining 271 authority.
- Contract pricing will result in discrimination by ILECs.
- Pricing flexibility will allow ILECs to shift common costs from competitive markets to less competitive markets, thereby delaying competition in rural areas.
- The Commission must reject ILEC petitions for pricing flexibility as premature.

# **RELATED ISSUES (cont'd)**

- **ILECS Continually Seek to Circumvent the Act**
  - Ameritech, Bell Atlantic and US WEST have all filed petitions seeking forbearance from dominant carrier regulation in provision of dedicated transport for switched access and high capacity special access.
  - Bell Atlantic and GTE are seeking relief from interLATA restrictions following their merger, as well as permission to allow GTE to retain its existing Internet backbone network.
  - Bell Atlantic sought waiver of LATA boundaries to address an alleged 'bandwidth famine' in West Virginia.



# **THE FCC'S REMAND PROCEEDING ON RULE 319**

CC DOCKET NO. 96-98

MARCH 23, 1999

CRONAN O'CONNELL, ALTS

(202.969.2595)

JON CANIS

KELLEY DRYE & WARREN, LLP

(202.955.9600)

# **THE ‘NECESSARY’ AND ‘IMPAIR’ STANDARD**

- The Commission should commence this proceeding immediately.
- Supreme Court said Commission must use “rational basis” test, “taking into account the objectives of the Act.”
- Categorical, not a locality by locality approach, should be used.

# **THE 'NECESSARY' AND 'IMPAIR' STANDARD (cont'd)**

- In applying the standard the Commission should examine:
  - the availability of alternative capability/functionality from another source in all geographic areas;
  - the quality of the available substitute capability/functionality;
  - whether functionality is available in timely manner under similar terms and conditions as would be available from ILECs;
  - whether alternatives are available at prices which approximate TELRIC cost of ILEC facilities.

# RELATED ISSUES

- **Geographic Deaveraging**

- Deaveraging should NOT be linked to the universal service proceeding in any fashion.
- Sections 251 and 252 of the Act mandate that rates be cost-based; *AT&T v. Iowa Util. Bd.* specifically upheld the Commission's pricing authority.
- Chairman Kennard recently noted that the local loop "is critical for making local phone competition a reality," and any delay in deaveraging will hamper competition in rural areas.
- The Commission properly concluded in First Report and Order that "rates for interconnection and unbundled elements must be geographically deaveraged," and nothing in the record has changed. *See* 47 C.F.R. Sec. 51.507(f).
- Deaveraging should be implemented within 6 months.

# RELATED ISSUES (cont'd)

- **ILEC Petitions for Pricing Flexibility**
  - FCC triggers as set forth in the *Access Reform Order* (i.e. geographic deaveraging, UNEs at TELRIC prices) have not yet been implemented.
  - Competition is not yet robust and sustainable, as evidenced by the fact that no ILEC has succeeded in obtaining 271 authority.
  - Contract pricing will result in discrimination by ILECs.
  - Pricing flexibility will allow ILECs to shift common costs from competitive markets to less competitive markets, thereby delaying competition in rural areas.
  - The Commission must reject ILEC petitions for pricing flexibility as premature.

# **RELATED ISSUES (cont'd)**

- **ILECS Continually Seek to Circumvent the Act**
  - Ameritech, Bell Atlantic and US WEST have all filed petitions seeking forbearance from dominant carrier regulation in provision of dedicated transport for switched access and high capacity special access.
  - Bell Atlantic and GTE are seeking relief from interLATA restrictions following their merger, as well as permission to allow GTE to retain its existing Internet backbone network.
  - Bell Atlantic sought waiver of LATA boundaries to address an alleged 'bandwidth famine' in West Virginia.

# **THE FCC'S REMAND PROCEEDING ON RULE 319**

CC DOCKET NO. 96-98

MARCH 23, 1999

CRONAN O'CONNELL, ALTS

(202.969.2595)

JON CANIS

KELLEY DRYE & WARREN, LLP

(202.955.9600)

# **THE ‘NECESSARY’ AND ‘IMPAIR’ STANDARD**

- The Commission should commence this proceeding immediately.
- Supreme Court said Commission must use “rational basis” test, “taking into account the objectives of the Act.”
- Categorical, not a locality by locality approach, should be used.



# THE 'NECESSARY' AND 'IMPAIR' STANDARD (cont'd)

- In applying the standard the Commission should examine:
  - the availability of alternative capability/functionality from another source in all geographic areas;
  - the quality of the available substitute capability/functionality;
  - whether functionality is available in timely manner under similar terms and conditions as would be available from ILECs;
  - whether alternatives are available at prices which approximate TELRIC cost of ILEC facilities.

# RELATED ISSUES

- **Geographic Deaveraging**

- Deaveraging should NOT be linked to the universal service proceeding in any fashion.
- Sections 251 and 252 of the Act mandate that rates be cost-based; *AT&T v. Iowa Util. Bd.* specifically upheld the Commission's pricing authority.
- Chairman Kennard recently noted that the local loop "is critical for making local phone competition a reality," and any delay in deaveraging will hamper competition in rural areas.
- The Commission properly concluded in First Report and Order that "rates for interconnection and unbundled elements must be geographically deaveraged," and nothing in the record has changed. *See* 47 C.F.R. Sec. 51.507(f).
- Deaveraging should be implemented within 6 months.

# RELATED ISSUES (cont'd)

- **ILEC Petitions for Pricing Flexibility**

- FCC triggers as set forth in the *Access Reform Order* (i.e. geographic deaveraging, UNEs at TELRIC prices) have not yet been implemented.
- Competition is not yet robust and sustainable, as evidenced by the fact that no ILEC has succeeded in obtaining 271 authority.
- Contract pricing will result in discrimination by ILECs.
- Pricing flexibility will allow ILECs to shift common costs from competitive markets to less competitive markets, thereby delaying competition in rural areas.
- The Commission must reject ILEC petitions for pricing flexibility as premature.

# **RELATED ISSUES (cont'd)**

- **ILECS Continually Seek to Circumvent the Act**
  - Ameritech, Bell Atlantic and US WEST have all filed petitions seeking forbearance from dominant carrier regulation in provision of dedicated transport for switched access and high capacity special access.
  - Bell Atlantic and GTE are seeking relief from interLATA restrictions following their merger, as well as permission to allow GTE to retain its existing Internet backbone network.
  - Bell Atlantic sought waiver of LATA boundaries to address an alleged 'bandwidth famine' in West Virginia.

# **THE FCC'S REMAND PROCEEDING ON RULE 319**

CC DOCKET NO. 96-98

MARCH 23, 1999

CRONAN O'CONNELL, ALTS

(202.969.2595)

JON CANIS

KELLEY DRYE & WARREN, LLP

(202.955.9600)

# **THE ‘NECESSARY’ AND ‘IMPAIR’ STANDARD**

- The Commission should commence this proceeding immediately.
- Supreme Court said Commission must use “rational basis” test, “taking into account the objectives of the Act.”
- Categorical, not a locality by locality approach, should be used.

# **THE ‘NECESSARY’ AND ‘IMPAIR’ STANDARD (cont’d)**

- In applying the standard the Commission should examine:
  - the availability of alternative capability/functionality from another source in all geographic areas;
  - the quality of the available substitute capability/functionality;
  - whether functionality is available in timely manner under similar terms and conditions as would be available from ILECs;
  - whether alternatives are available at prices which approximate TELRIC cost of ILEC facilities.

# RELATED ISSUES

- **Geographic Deaveraging**

- Deaveraging should NOT be linked to the universal service proceeding in any fashion.
- Sections 251 and 252 of the Act mandate that rates be cost-based; *AT&T v. Iowa Util. Bd.* specifically upheld the Commission's pricing authority.
- Chairman Kennard recently noted that the local loop "is critical for making local phone competition a reality," and any delay in deaveraging will hamper competition in rural areas.
- The Commission properly concluded in First Report and Order that "rates for interconnection and unbundled elements must be geographically deaveraged," and nothing in the record has changed. *See* 47 C.F.R. Sec. 51.507(f).
- Deaveraging should be implemented within 6 months.



# RELATED ISSUES (cont'd)

- **ILEC Petitions for Pricing Flexibility**

- FCC triggers as set forth in the *Access Reform Order* (i.e. geographic deaveraging, UNEs at TELRIC prices) have not yet been implemented.
- Competition is not yet robust and sustainable, as evidenced by the fact that no ILEC has succeeded in obtaining 271 authority.
- Contract pricing will result in discrimination by ILECs.
- Pricing flexibility will allow ILECs to shift common costs from competitive markets to less competitive markets, thereby delaying competition in rural areas.
- The Commission must reject ILEC petitions for pricing flexibility as premature.

# **RELATED ISSUES (cont'd)**

- **ILECS Continually Seek to Circumvent the Act**
  - Ameritech, Bell Atlantic and US WEST have all filed petitions seeking forbearance from dominant carrier regulation in provision of dedicated transport for switched access and high capacity special access.
  - Bell Atlantic and GTE are seeking relief from interLATA restrictions following their merger, as well as permission to allow GTE to retain its existing Internet backbone network.
  - Bell Atlantic sought waiver of LATA boundaries to address an alleged 'bandwidth famine' in West Virginia.

# **THE FCC'S REMAND PROCEEDING ON RULE 319**

CC DOCKET NO. 96-98

MARCH 23, 1999

CRONAN O'CONNELL, ALTS

(202.969.2595)

JON CANIS

KELLEY DRYE & WARREN, LLP

(202.955.9600)

# **THE ‘NECESSARY’ AND ‘IMPAIR’ STANDARD**

- The Commission should commence this proceeding immediately.
- Supreme Court said Commission must use “rational basis” test, “taking into account the objectives of the Act.”
- Categorical, not a locality by locality approach, should be used.

# **THE ‘NECESSARY’ AND ‘IMPAIR’ STANDARD (cont’d)**

- In applying the standard the Commission should examine:
  - the availability of alternative capability/functionality from another source in all geographic areas;
  - the quality of the available substitute capability/functionality;
  - whether functionality is available in timely manner under similar terms and conditions as would be available from ILECs;
  - whether alternatives are available at prices which approximate TELRIC cost of ILEC facilities.

# RELATED ISSUES

- **Geographic Deaveraging**

- Deaveraging should NOT be linked to the universal service proceeding in any fashion.
- Sections 251 and 252 of the Act mandate that rates be cost-based; *AT&T v. Iowa Util. Bd.* specifically upheld the Commission's pricing authority.
- Chairman Kennard recently noted that the local loop "is critical for making local phone competition a reality," and any delay in deaveraging will hamper competition in rural areas.
- The Commission properly concluded in First Report and Order that "rates for interconnection and unbundled elements must be geographically deaveraged," and nothing in the record has changed. *See* 47 C.F.R. Sec. 51.507(f).
- Deaveraging should be implemented within 6 months.

# RELATED ISSUES (cont'd)

- **ILEC Petitions for Pricing Flexibility**

- FCC triggers as set forth in the *Access Reform Order* (i.e. geographic deaveraging, UNEs at TELRIC prices) have not yet been implemented.
- Competition is not yet robust and sustainable, as evidenced by the fact that no ILEC has succeeded in obtaining 271 authority.
- Contract pricing will result in discrimination by ILECs.
- Pricing flexibility will allow ILECs to shift common costs from competitive markets to less competitive markets, thereby delaying competition in rural areas.
- The Commission must reject ILEC petitions for pricing flexibility as premature.

# **RELATED ISSUES (cont'd)**

- **ILECS Continually Seek to Circumvent the Act**
  - Ameritech, Bell Atlantic and US WEST have all filed petitions seeking forbearance from dominant carrier regulation in provision of dedicated transport for switched access and high capacity special access.
  - Bell Atlantic and GTE are seeking relief from interLATA restrictions following their merger, as well as permission to allow GTE to retain its existing Internet backbone network.
  - Bell Atlantic sought waiver of LATA boundaries to address an alleged 'bandwidth famine' in West Virginia.